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PP v. MOHD ROSIDI MAT AMIN

HIGH COURT MALAYA, SHAH ALAM
COLLIN LAWRENCE SEQUERAH JC
[CRIMINAL TRIALS NO: 45A-264-11-2012 & 45A-273-12-2012]
2 FEBRUARY 2015

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CRIMINAL LAW: *Dangerous Drugs Act 1952 – Section 39B(1)(a) & (2) – Trafficking in 879g and 3801g cannabis – Element of possession – Actual possession – Drugs found in transparent white plastic bag under driver's seat of taxi registered in name of accused – Absence of anyone else at time of arrest – Whether accused had actual possession of dangerous drugs – Whether accused was trafficking in dangerous drugs*

C

CRIMINAL PROCEDURE: *Mens rea – Trafficking in dangerous drugs – Weight exceeded statutory minimum requirement – Whether raised irresistible inference that drugs intended for trafficking*

D

EVIDENCE: *Relevancy – Drug trafficking – Motive – Knowledge – Conduct of accused at time of arrest – Whether admissible to show accused had requisite knowledge of dangerous drugs – Evidence Act 1950, s. 8*

EVIDENCE: *Presumption – Drug trafficking – Presumption under s. 37(da)(vi) of Dangerous Drugs Act 1952 – Invocation of presumption following affirmative finding of actual possession – Whether court entitled to invoke presumption*

E

EVIDENCE: *Exhibits – Break in chain of evidence – Recovery of drugs in two separate situations – Whether there was break in chain of evidence*

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Inspector Mohd Hasni bin Hussin ('SP3'), upon receiving information regarding a drug trafficking transaction, led a team for raiding. During the surveillance, SP3 saw a Proton Saga taxi ('the taxi') arriving and stopping by the roadside. SP3 saw the accused, who was the taxi driver, alight from the taxi while carrying a white plastic bag in his right hand. SP3 then instructed his team to surround the accused and detain him. The accused attempted to flee but was immediately apprehended. SP3 conducted a physical search on the accused. A white plastic bag was seized from the accused and a compressed dried plant material subsequently confirmed to be 879g of cannabis, marked as exh. N1, was found inside the plastic bag. SP3 then conducted further search on the taxi and found four compressed and dried plant material subsequently confirmed to be 3,801g of cannabis, marked as exhs. NN1 to NN4 respectively, under the driver's seat. The accused was subsequently charged for two offences of trafficking, *to wit* 879g and 3,801g of cannabis, under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA') punishable under s. 39B(2) of the same Act. Both the charges were tried and heard together pursuant to s. 165 of the Criminal Procedure Code ('CPC'). At the end of the prosecution case, the court found that the accused had actual possession of the impugned drugs in respect of both charges. There was also

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no break in the chain of evidence. In the circumstances, the court found that the prosecution had succeeded in proving a *prima facie* case and called upon the accused to enter his defence. In his defence, the accused contended that the plastic bag did not belong to him and that it belonged to one Saiful Effendi ('Saiful'), a passenger who was alleged to have left the said plastic bag in his taxi. The accused further contended that he had been framed up and that he had no connection with the drugs that was found in his taxi.

Held (convicting and sentencing accused to death):

(1) In respect of exh. N1, which the accused was carrying in his right hand, the accused was seen carrying the said drugs out of the taxi and walking with the drugs in a plastic bag. The drugs in question weighed 879g nett and was wrapped in transparent plastic in a white bag. It was therefore improbable that the accused did not know or was not aware of what he was carrying with him. The fact that the accused had attempted to flee during the raid was also admissible under the provisions of s. 8 of the Evidence Act 1950 to show that the accused had knowledge that what he was carrying with him was dangerous drugs. By inference, the accused had the requisite knowledge that what he was carrying was dangerous drugs. The accused had actual knowledge of drugs contained in exh. N1. (para 24)

(2) In respect of exhs. NN1 to NN4, which was found under the driver's seat of the taxi, the accused had been driving the said taxi since 21 February 2011. There was no one else but the accused in the said taxi at the time of his arrest. Therefore, the accused was in actual possession of the impugned drugs and had the requisite knowledge of the nature of the said drugs in question. (para 25)

(3) The presumption under s. 37(da)(vi) had arisen against the accused in respect of both charges by reason of an affirmative finding that the accused was in actual possession of the impugned drugs in respect of both charges against the accused. (para 27)

(4) Drugs recovered from the accused's possession and from the taxi were the very same drugs identified and produced in the court during the trial. Thus, there was no break in the chain of evidence. (para 28)

(5) The act of the accused in carrying the drugs contained in the white plastic bag when apprehended by the police, raised the irresistible inference that the accused intended to traffic the drugs in question. If not for the fact that he was apprehended, the fair inference was that the purpose of the accused in so carrying the impugned drugs would have been to hand them over to someone else for a price. The nett weight of the drugs being 879g would further raise inference that it was for the purpose of trafficking and not for the personal consumption of the accused. (paras 49 & 50)

(6) The manner in which the drugs in question was found concealed under the driver's seat raised an inference that it was done so in order to conceal detection while it was being transported and therefore raised the further inference that it was done so for the purpose of trafficking in the impugned drugs. This coupled with the fact that the nett weight of drugs found in the taxi was 3,801g which far exceeded the statutory minimum, also raised the irresistible inference that it was for the purpose of trafficking. The weight of the said drugs would also militate against any argument that the drugs were for personal consumption of the accused. (para 50)

(7) The accused had failed to rebut on balance of probabilities the presumption of trafficking under s. 37(da)(vi) of the DDA both in respect of the drugs having a nett weight of 879g recovered from him and also the drugs having a nett weight of 3,801g recovered from taxi as per both charges against the accused. The accused had also failed to raise a reasonable doubt as to his knowledge and possession of the drugs in both the charges against him. (para 51)

Case(s) referred to:

Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Chan Pean Leon v. PP [1956] 1 LNS 17 HC ***(refd)***
Leow Nghee Lim v. Regina [1955] 1 LNS 53 HC ***(refd)***
Looi Kow Chai & Anor v. PP [2003] 1 CLJ 734 CA ***(refd)***
Mat v. PP [1963] 1 LNS 82 HC ***(foll)***
Md Zainudin Raujan v. PP [2013] 4 CLJ 21 FC ***(refd)***
Muhammed Hassan v. PP [1998] 2 CLJ 170 FC ***(refd)***
Munusamy Vengadasalam v. PP [1987] 1 CLJ 250; [1987] CLJ Rep 221 SC ***(refd)***
Parlan Dadeh v. PP [2009] 1 CLJ 717 FC ***(refd)***
PP v. Abdul Rahman Akif [2007] 4 CLJ 337 FC ***(refd)***
PP v. Datuk Haji Harun Haji Idris & Ors [1977] 1 LNS 92 HC ***(refd)***
PP v. Dato' Seri Anwar Ibrahim (No 3) [1999] 2 CLJ 215 HC ***(refd)***
PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC ***(refd)***
Prasit Punyang v. PP [2014] 7 CLJ 392 CA ***(refd)***
PP v. Muhamad Nasir Shaharuddin & Anor [1992] 1 LNS 8 HC ***(refd)***
PP v. Saimin & Ors [1971] 1 LNS 115 HC ***(refd)***
PP v. Yuvaraj [1968] 1 LNS 116 PC ***(refd)***
Toh Ah Loh & Mak Thim v. Rex [1948] 1 LNS 72 HC ***(refd)***

Legislation referred to:

Criminal Procedure Code, ss. 165, 173(f)(i), 180(1), 182A
Dangerous Drugs Act 1952, ss. 37(d), (da)(vi), 39B(1)(a), (2)
Evidence Act 1950, s. 8

For the prosecution - Faten Hadni Khairuddin; DPP
For the accused - Salim Bashir; M/s Salim Bashir, Ruswiza & Co

Reported by Thirunavakarasu Vijayan

JUDGMENT

Collin Lawrence Sequerah JC:

The Charge Against The Accused

[1] The accused was charged with two charges (translated from Bahasa Malaysia) as follows:

> First Charge
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> That you on 8th of May 2012 around 5.30pm at Lorong 8, Kampung Merbau Sempak Sg Pelong, Petaling Jaya, in the district of Petaling, in the state of Selangor Darul Ehsan did traffic in Dangerous drugs *to wit* Cannabis weighing a total of 879 grams and you have thereby committed an offence under Section 39B(1)(a) Dangerous Drugs Act 1952 and punishable under Section 39(2) of the same Act.
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> Second Charge
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> That you on 8th of May 2012 around 5.30pm at Lorong 8, Kampung Merbau Sempak Sg Pelong, Petaling Jaya, in the district of Petaling, in the state of Selangor Darul Ehsan did traffic in Dangerous drugs *to wit* Cannabis weighing a total of 3801 grams and you have thereby committed an offence under Section 39B(1)(a) Dangerous Drugs Act 1952 and punishable under Section 39(2) of the same Act.

[2] The prosecution made an application to have both charges tried together pursuant to the provisions of s. 165 of the Criminal Procedure Code. The defence did not raise any objections to this application. The court therefore allowed the prosecution's application to try and hear both charges together.

Prosecution Case

[3] The brief facts of the case as led by the prosecution witnesses were as follows:

[4] On 8 May 2012, at about 3.30pm, while Inspector Mohd Hasni bin Hussin (SP3) was on duty at the Criminal Investigation Department Narcotics Division, Police Headquarters Petaling Jaya, he received certain information. Acting on that information, at about 4.30pm, SP3 conducted a briefing of 12 raiding officers at the police station at Sg Pelong. All the officers including SP3 himself, were divided into three teams for the purposes of the raid.

[5] At about 5pm, SP3 and his team arrived at the area of Lorong 8, Kampung Merbau Sempak, Sg Pelong, Petaling Jaya and assumed their respective positions in order to conduct observation in preparation for the raid. All the members of the raiding party were attired in civilian clothing. At about 5.30pm, SP3 saw a Proton Saga taxi registration No. HWD 6002 (taxi) arrive at the area where SP3 and his team were waiting. The taxi stopped by the side of the road. SP3 saw the driver alight while carrying a white plastic bag in his right hand. SP3 then instructed his team to surround

A the driver and detain him. The driver is the accused. The accused attempted to flee but was apprehended close by the taxi. SP3 introduced himself as a police officer and conducted a physical search on the accused.

[6] As a result of the search, SP3 seized a white plastic bag from the right hand of the accused. Inside the white plastic bag he discovered one
B compressed dried plant material believed to be cannabis. This was marked as exh. N1. SP3 then seized a bunch of keys from the right hand side pocket of the accused and used it to open the taxi. SP3 then conducted a search inside the taxi and found four compressed and dried plant material suspected to be cannabis under the driver's seat. These were marked as exhs. NN1 until
C NN4 respectively. SP3 then seized a general transportation card (kad pengangkutan awam) in the name of the accused from the passenger glove compartment of the taxi.

[7] The accused was then arrested and brought to the District Police Headquarters (IPD) Petaling Jaya together with the exhibits. SP3 weighed
D the plant material using an electronic weighing scale and found the gross weight of exhibit marked as N1 to be more than 900g while exhibits marked as NN1 until NN4 weighed less than 4,000g. A search list (P16) was served on the accused. On the same day ie, 8 May 2012 at about 8.30pm the search list and the exhibits were handed over to Inspector Mohamad Nazri bin
E Nordin, SP5, who was the investigation officer. The handing over list was marked as exh. P17.

[8] All the exhibits were sent to the Chemist Department Malaysia for analysis. SP4, the chemist, confirmed that the compressed dried plant material marked as exh. N1 seized from the hand of the accused was cannabis
F having a nett weight of 879g. SP4 also confirmed that the compressed dried plant material marked as exhs. NN1 to NN4 which was found under the driver's seat of the taxi, was cannabis which had a nett weight of 3,801g. SP4 reduced her findings in a report (PJ) FOR6473/12-0 marked as exh. P37.

G **[9]** Investigations conducted revealed that the accused was the registered driver of the taxi bearing registration No. HWD 6002. The said taxi was registered in the name of a company known as Teksi Destination Transport (M) Sdn Bhd. The company, based on an agreement dated 18 February 2011 and marked as exh. P11 had leased the said taxi to the accused. SP1 who was a representative of the said company, testified that the accused had been
H driving the said taxi since 21 January 2011.

Duty Of The Court At The End Of The Prosecution Case

[10] Section 180(1) of the Criminal Procedure Code stipulates the duty of the court at the end of the prosecution case. It reads as follows:

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> 180. Procedure after conclusion of case for prosecution
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> (1) When the case for the prosecution is concluded, the Court shall consider whether the prosecution has made out a *prima facie* case against the accused.

(2) If the Court finds that the prosecution has not made out a *prima facie* case against the accused, the Court shall record an order of acquittal.

(3) If the Court finds that a *prima facie* case has been made out against the accused on the offence charged the Court shall call upon the accused to enter on his defence.

(4) For the purpose of this section, a *prima facie* case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would warrant a conviction.

[11] Both s. 180(1) and s. 173(f)(i) of the Criminal Procedure Code (CPC) are couched in similar terms. They both state that when the case for the prosecution is concluded, the court shall consider whether the prosecution has made out a *prima facie* case against the accused. The duty upon the court at that stage has also been the subject of judicial consideration in the cases of *PP v. Dato' Seri Anwar Ibrahim (No 3)* [1999] 2 CLJ 215; [1999] 2 AMR 2017; [1999] 2 MLJ 1, *Looi Kow Chai & Anor v. PP* [2003] 1 CLJ 734; [2003] 2 AMR 89, *Balachandran v. PP* [2005] 1 CLJ 85 and *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457; [2005] 6 AMR 203 respectively. They are all united in the stand that they take, and that is that the evidence at the close of the case for the prosecution must be subjected to maximum evaluation in order to determine whether a *prima facie* case is made out that would justify a court in calling for the defence of the accused. The phrase '*prima facie* case' itself has not been statutorily defined in the above sections. However, it has been the subject of judicial pronouncement. In the case of *Dato' Seri Anwar Ibrahim (supra)*, His Lordship Augustine Paul J (as he then was) had this to say on the meaning of the phrase '*prima facie* case':

> The meaning of *prima facie* case in s. 180(1) of the Criminal Procedure Code must be understood in the context of a non-jury trial. A *prima facie* case arises where the evidence in favour of a party is sufficiently strong for the opposing party to be called on to answer. The evidence adduced must be such that it can be overthrown only by rebutting evidence by the other side. Taken in its totality, the force of the evidence must be such that, if unrebutted, it is sufficient to induce the court to believe in the existence of the facts stated in the charge or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. As this exercise cannot be postponed to the end of the trial a maximum evaluation of the credibility of the witnesses must be done at the close of the case against the prosecution before the court can rule that a *prima facie* case has been made out in order to call for defence. Be that as it may, I am unable to agree with the defence submission that this means that the prosecution must prove its case beyond reasonable doubt at that stage. A case is said to have been proven beyond a reasonable doubt only upon a consideration and assessment of all the evidence (see *Canadian Criminal Evidence* (3rd Ed) ... thus, a *prima*

facie case as prescribed by the new section 180(1) of the Criminal Procedure Code must mean a case which if unrebutted would warrant a conviction.

[12] In *Looi Kow Chai & Anor v. PP* [2003] 1 CLJ 734; [2003] 2 MLJ 65, Gopal Sri Ram JCA (as he then was) speaking for the Court of Appeal had this to say:

> In our respectful view, the correct test to be applied in determining whether a *prima facie* case has been made out under s. 180 of the CPC (and this would apply to a trial under s. 173 of the CPC) is that as encapsulated in the judgment of Hashim Yeop Sani FJ (as he then was) in *Dato' Mokhtar bin Hashim & Anor v. Public Prosecutor* [1983] 1 CLJ 138; [1983] CLJ (Rep) 721; [1983] 2 MLJ 232 at p. 270:
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> > To summarise, it would therefore appear that having regard to the prosecution evidence adduced so far, a *prima facie* case has not been established against Nordin Johan and Aziz Abdullah, the second accused and the fourth accused which, failing their rebuttal, would warrant their conviction. In other words if they elect to remain silent now (which I hold they are perfectly entitled to do even though they are being tried under the Emergency Regulations) the question is can they be convicted of the offence of section 302 read with section 34 of the Penal Code? My answer to the question is in the negative.
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> > We are confident in the view we have just expressed because we find nothing in the amended s. 180(1) of the CPC that has taken away the right of an accused person to remain silent at the close of the prosecution case. Further we find nothing in the legislative intention of Parliament as expressed in the language employed by it to show that there should be a dual exercise by a judge under s. 180 when an accused elects to remain silent as happened in *Pavone v. Public Prosecutor* [1984] 1 MLJ 77. In other words we are unable to discover anything in the language of the recently formulated s. 180 that requires a judge sitting alone first to make a minimum evaluation and then when the accused elects to remain silent to make a maximum evaluation in deciding whether to convict or not at the close of the prosecution case.
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> > It therefore follows that there is only one exercise that a judge sitting alone under s. 180 of the CPC has to undertake at the close of the prosecution case. He must subject the prosecution evidence to maximum evaluation and to ask himself the question: if I decide to call upon the accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contained in the prosecution case? If the answer is in the negative then no *prima facie* case has been made out and the accused would be entitled to an acquittal.

[13] It is therefore evident that the expected standard to which a trial court should hold the prosecution to is that of a maximum evaluation of the evidence of all their witnesses. This exercise necessarily involves the court in subjecting all the evidence of the prosecution witnesses to strict curial scrutiny. The credibility of the testimony of all the witnesses for the prosecution must be scrutinised and evaluated with a fine toothcomb. Should more than one inference arise as a result of this exercise, the one favourable to the accused must be adopted. The analysis of the evidence led by the prosecution proceeded with the foregoing principles in the forefront of the mind of this court.

Analysis Of The Prosecution Case

Ingredients Of The Offence Of Trafficking

[14] It is incumbent on the prosecution to prove the following elements or ingredients of the offence charged against the accused. Firstly, that the substances found were dangerous drugs as listed in the Dangerous Drugs Act 1952 (DDA) and having a nett weight as per the charge. Secondly, that the accused was in possession of the said drugs. Thirdly, that the accused was trafficking in the impugned drugs.

(i) The Substances Were Dangerous Drugs As Listed In The DDA

[15] The prosecution called Pn Norhaya bte Jaafar, PW4, the chemist who analysed the drugs in question as a witness. She testified that she conducted an analysis of one slab of compressed dry plant material in a wrapper marked as 'N1' and confirmed it to be cannabis having a nett weight of 879g. She said that she also conducted an analysis of four slabs of compressed dry plant material in a wrapper marked as 'NN1 - NN4' and confirmed it to be cannabis having a nett weight of 3,801g. These were also confirmed *via* her sworn testimony and the findings contained in the chemist report marked as exh. P37. PW4 further confirmed that the cannabis she analysed was of the type cannabis as listed under the First Schedule to the DDA.

[16] The prosecution employed in its aid *via* submission the Federal Court case of *Munusamy Vengadasalam v. Public Prosecutor* [1987] 1 CLJ 250; [1987] CLJ (Rep) 221 the material part of which held as follows:

> We are therefore of the view, that in this type of cases where the opinion of the chemist is confined only to the elementary nature and identity of the substance, the Court is entitled to accept the opinion of the expert of its face value, unless it is inherently incredible or the defence calls evidence in rebuttal by another expert to contradict the opinion. So long as some credible evidence is given by the chemist to support his opinion, there is no necessity for him to go into the details of what he did in the laboratory, step by step.

[17] From all of the above, the court was satisfied on the evidence adduced that the prosecution had successfully proven the first element in the charges against the accused.

(ii) The Accused Was In Possession Of The Said Drugs

[18] In a charge of trafficking in dangerous drugs, possession is the most important ingredient. Unless there is direct evidence of trafficking, it is a necessary step towards proving trafficking. The prosecution can prove 'possession' either by direct evidence or employing in aid the presumption under s. 37(d) of the Dangerous Drugs Act 1952 (DDA). As far as proof of direct possession is concerned, the law was taken as settled as early as 1949 that possession in order to incriminate a person, must have the following characteristics: (a) the possessor must know the nature of the thing possessed; (b) he must have a power of disposal over it and (c) he must be conscious of his possession of the thing. See *Toh Ah Loh & Mak Thim v. Rex* [1948] 1 LNS 72; [1949] MLJ 54.

[19] In *Leow Nghee Lim v. Regina* [1955] 1 LNS 53; [1956] 1 MLJ 28 Taylor J explained 'possession' as follows:

> The word "possession" is a vague and general word which cannot be closely defined. Without at least general knowledge there cannot be possession but there can be possession without full and exact knowledge. This is recognised in the present Drugs Ordinance which provides, by the presumption already cited, that if a man has custody or control of a drug the onus of proving, first that he did not have possession, and secondly that he did not know the nature of the drug, shall be shifted to him. The Ordinance deals both with opium and with other drugs. Possession of opium is prohibited absolutely. Possession of drugs in general is not prohibited absolutely because many drugs are familiar household articles; it is only dangerous drugs which are prohibited. The special presumption as to knowing the nature will therefore seldom apply to opium; it will more frequently apply to other drugs. A man might know that he had a white powder, and therefore be in possession of a drug, but he might not know whether it was bicarbonate, a common household drug, or heroin, a dangerous drug of similar appearance. Such a case would resemble that of Sleep (1861) 8 Cox CC 472; Le & Ca 44 *supra*. The distinction is not applicable in the present case but is mentioned here because counsel argued that the word "possession" is used in different senses in the Ordinance. I do not think that is so. I think the word possession is used consistently in the Ordinance in its ordinary, but imprecise, sense.

[20] In *Chan Pean Leon v. PP* [1956] 1 LNS 17; [1956] MLJ 237, Thompson J said:

> "... possession" itself as regards the criminal law is described as follows in Stephen's Digest (9th Edition pg 304):
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> > A moveable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.

> To put it otherwise, there is a physical element and a mental element which must both be present before possession is made out. The accused must not only be so situated that he can deal with the thing as if it belonged to him, for example have it in his pocket or have it lying in front of him on a table. It must also be shown that he had the intention of dealing with it as if it belonged to him should he see any occasion to do so, in other words, that he had some *animus possidendi*. Intention is a matter of fact which in the nature of things cannot be proved by direct evidence. It can only be proved by inference from the surrounding circumstances. Whether these surrounding circumstances make out such intention is a question of fact in each individual case. If a watch is in my pocket then in the absence of anything else the inference will be clear that I intend to deal with it as if it were my own and accordingly I am in possession of it. On the other hand, if it is lying on a table in a room in which I am but which is also frequently used by other people then the mere fact that I am in physical proximity to it does not give rise to the inference that I intend to deal with it as if it belonged to me. There must be some evidence that I am doing or having done something with it that shews such an intention. Or it must be clear that the circumstances in which it is found shew such an intention. It may be found in a locked room to which I hold the key or it may be found in a drawer mixed up with my own belongings or it may be found, as occurred in a recent case, in a box under my bed. The possible circumstances cannot be set out exhaustively and it is impossible to lay down any general rule on the point. But there must be something in the evidence to satisfy the Court that the person who is physically in a position to deal with the thing as his own had the intention of doing so.

[21] Closer to modern times, in *Public Prosecutor v. Muhamad Nasir Shaharuddin & Anor* [1992] 1 LNS 8; [1994] 2 MLJ 576 possession was discussed in the following manner:

> Possession is not defined in the DDA. However, it is now firmly established that to constitute possession, it is necessary to establish that; (a) the person had knowledge of the drugs; and (b) that the person had some form of control or custody of the drugs. To prove either of these two requirements, the prosecution may either adduce direct evidence or it may rely on the relevant presumptions under s. 37 of the DDA.

[22] In *PP v. Abdul Rahman Akif* [2007] 4 CLJ 337; [2007] 5 MLJ 1, it was held:

> But mere custody and control is not sufficient to establish possession for the purpose of the Act, there has to be established knowledge of such drug by the respondent. In *Chan Pean Leon v. Public Prosecutor* [1956] MLJ 237 Thomson J dealt with the issue of possession under the Stephen's Digest (9th Ed) p. 304:
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> > A moveable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.

To put it otherwise, there is a physical element and a mental element which must both be present before possession is made out. The accused must not only be so situated that he can deal with the thing as if it belonged to him, for example have it in his pocket or have it lying in front of him on a table. It must also be shown that he had the intention of dealing with it as if it belonged to him should he see any occasion to do so, in other words, that he had some *animus possidendi*. Intention is a matter of fact which in the nature of things cannot be proved by direct evidence. It can only be proved by inference from the surrounding circumstances. Whether these surrounding circumstances make out such intention is a question of fact in each individual case. If a watch is in my pocket then in the absence of anything else the inference will be clear that I intend to deal with it as if it were my own and accordingly I am in possession of it. On the other hand, if it is lying on a table in a room in which I am but which is also frequently used by other people then the mere fact that I am in physical proximity to it does not give rise to the inference that I intend to deal with it as if it belonged to me. There must be some evidence that I am doing or having done something with it that shows such an intention. Or it must be clear that the circumstances in which it is found show such an intention. It may be found in a locked room to which I hold the key or it may be found in a drawer mixed up with my own belongings or it may be found, as occurred in a recent case, in a box under my bed. The possible circumstances cannot be set out exhaustively and it is impossible to lay down any general rule on the point. But there must be something in the evidence to satisfy the court that the person who is physically in a position to deal with the thing as his own had the intention of doing so.

[15] And further down on the same page, he added:

> Here again knowledge cannot be proved by direct evidence, it can only be proved by inference from the surrounding circumstances. Again the possible variety of circumstances which will support such an inference is infinite.

[16] It is trite that what constitutes 'possession' under s. 37 of the Act is a question of law (see *Yee Ya Mang v. Public Prosecutor* [1972] 1 MLJ 120 and *Public Prosecutor v. Badrulsham Baharom* [1988] 2 MLJ 585). It is however a question of fact whether in a given case a person can be said to be in possession of something. And in relation to drug found in a vehicle Shankar J in *Pendakwa Raya v. Kang Ho Soh* [1991] 3 CLJ 2914; [1991] 3 CLJ (Rep) 557; [1992] 1 MLJ 360, after considering a number of authorities, at p. 371 stated:

> ... those cases do not decide that in all cases a person who is in sole charge of a vehicle cannot be found to be in possession of articles being carried in it. As Thomson J himself said in *Tong Peng Hong v. PP* at p 233:
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> > If something be found, for example, in a bag which I am carrying or in a box to which I hold the key it is extremely reasonable to suppose, unless I produce some satisfactory evidence to the contrary, that I know all about it ...

Again, at p. 234:

> I am not saying for one moment that a drug may not be found in a vehicle in such circumstances as would in the absence of disproof or explanation lead the court to the conclusion, quite independently of any statutory presumption, that it was in the possession of the person in control of the vehicle.

In *Tan Ah Tee*, Wee Chong Jin CJ, delivering the judgment of the court, said ([1978-1979] SLR 211 at pp. 217-218; [1980] 1 MLJ 49 at p. 52):

> Even if there were no statutory presumptions available to the prosecution, *once the prosecution had proved the fact of physical control or possession of the plastic bag and the circumstances in which this was acquired by and remained with the second appellant, the trial judges would be justified in finding that she had possession of the contents of the plastic bag within the meaning of the Act unless she gave an explanation of the physical fact which the trial judges accepted or which raised a doubt in their minds that she had possession of the contents within the meaning of the Act*. (emphasis added)

[23] Applying the principles enunciated above to the factual matrix of the prosecution evidence, can it be said that the prosecution has proven the element of possession on the part of the accused?

[24] In respect of the one slab of dried plant material (N1) which the accused was carrying in his right hand, it is clear that based on the evidence of PW3, the accused was seen carrying the said drugs out of the taxi and walking with the drugs in a plastic bag. According to the evidence of PW3, there was no one else present but the accused. The drugs in question weighed 879g nett and was wrapped in transparent plastic in a white plastic bag. This would mean of course that if he happened but to occasion so much as a glance into the white plastic bag, the drugs would have been fairly visible to the accused. It is therefore improbable that the accused did not know or was not aware of what he was carrying with him. The fact that the accused had attempted to flee during the raid is also admissible under the provisions of s. 8 of the Evidence Act 1950 to show that the accused had knowledge that what he was carrying with him was dangerous drugs. The principle enunciated in the case of *Parlan Dadeh v. PP* [2009] 1 CLJ 717 in respect of the relevancy of an accused persons reaction is also applicable here. It can be therefore fairly inferred from this that the accused had the requisite knowledge that what he was carrying was dangerous drugs. The finding of this court therefore is that the accused had actual possession (as opposed to presumed possession) of the drugs contained in exh. N1 weighing 879g nett.

[25] In respect of the drugs contained in exhs. NN1-NN4, the evidence led by the prosecution was that they were found under the driver's seat of the taxi bearing registration No. HWD 6002. Evidence was led by the prosecution through exh. P7 (Sijil Pengesahan Pemandu Teksi) that the registered driver of the said taxi was the accused. The said taxi was registered

with a company known as Teksi Destination Transport (M) Sdn Bhd. The evidence disclosed that the accused had been driving the said taxi since 21 February 2011. Exhibit P11 was a lease agreement dated 18 February 2011 entered into between the accused and the said taxi company. SP1, a representative from the company in whose name the taxi was registered, testified that according to the lease agreement, the accused had to obtain permission from the company before allowing anyone else to drive the taxi. SP1 further testified that no application was made by the accused for anyone else to drive the said taxi at any time. The evidence of PW3 further confirmed that there was no one else but the accused in the said taxi at the time of the accused's arrest. PW3 further testified that when he entered the said taxi, he got the smell of cannabis. He testified that he was able to tell it was the smell of cannabis based on his experience in dealing with narcotics. A culmination of the above evidence entitles this court to form the fair inference that the accused was in actual possession (as opposed to presumed possession) of the impugned drugs and had the requisite knowledge of the nature of the said drugs in question.

(iii) The Accused Was Trafficking In The Impugned Drugs

[26] The nett weight of 879g of cannabis contained in N1 and the nett weight of 3801g of cannabis found in NN1-NN4 respectively, raises the statutory presumption under s. 37(da)(vi) of the DDA 1952 against the accused. The said section reads as follows:

> In all proceedings under this Act or any regulation made thereunder:
>
> (da) any person who is found in possession of:
>
> (vi) 200 grammes or more in weight of cannabis;
>
> otherwise than in accordance with the authority of this Act or any other written law, shall be presumed, until the contrary is proved, to be trafficking in the said drug.

[27] This court is entitled to hold that the presumption under s. 37(da)(vi) has arisen against the accused in respect of both charges by reason of making an affirmative finding that the accused was in actual possession of the impugned drugs in respect of both charges against the accused. See the case of *Muhammed Hassan v. Public Prosecutor* [1998] 2 CLJ 170; [1998] 2 MLJ 273.

Chain Of Evidence

[28] This court was also satisfied that based on the evidence of the prosecution witnesses, the drugs recovered from the accused's possession and from the taxi bearing registration no. HWD 6002 were the very same drugs identified and produced in court during the trial. This court is accordingly satisfied that there has been no break in the chain of evidence in this case.

Finding Of The Court At The End Of Prosecution Case

[29] As a result of the foregoing and having undertaken an evaluation of the evidence of the witnesses for the prosecution on a maximum evaluation basis, this court therefore found that the prosecution has successfully made out a *prima facie* case against the accused in respect of both charges and therefore called for the defence of the accused. The three courses open to the accused at that stage were read out and explained to him and recorded as being understood by him. The accused elected to give sworn evidence.

The Defence Case

[30] The essence of the defence case is that on the day of his arrest on 8 May 2012 the accused received a phone call from a passenger of his named Saiful Effendi. Saiful Effendi requested the accused to pick him up and send him to the house of a friend of his by the name of Otai. This house was located at Sungai Pelong, Kampung Merbau Sempak. At the time the accused received the call from Saiful Effendi, he was at the KTM Commuter Station at Kepong. The accused then went to pick Saiful Effendi up at Bandar Baru Sentul. When Saiful Effendi boarded the taxi driven by the accused, he carried with him a plastic bag which he kept at the foot rest of the back passenger seat. Saiful Effendi meanwhile sat in the front passenger seat as he was a regular passenger of the accused. The accused said that he activated the taxi meter and headed for Sungai Pelong to the house of the said Otai. The accused had never met or seen this person by the name of Otai before. When he arrived at Otai's house, Saiful Effendi told the accused to wait a while as he wanted to ensure that Otai was in his house. Saiful Effendi alighted from the taxi and did not carry anything with him. The plastic bag which Saiful Effendi earlier brought with him was left in the taxi. The accused testified that he was to send Saiful Effendi back to Bandar Baru Sentul later. The accused then said that while he waited, he saw two or three men in plain clothes chase Saiful Effendi who looked shocked and took to his heels in an attempt to flee. Saiful Effendi's attempt to flee proved successful.

[31] After a few seconds, a group of men approached the accused's taxi and knocked on the window. He opened the door and he was pulled out and beaten by these men. The men also searched the taxi and asked him to whom the plastic bag belonged to. The accused replied that the plastic bag belonged to Saiful Effendi and told them that Saiful Effendi was his passenger. The accused said that he was then brought to the police station at Uptown Damansara where he was interrogated. The accused said he cooperated in the investigations. He said that as a result, he was brought by the police to Bandar Baru Sentul and he showed them where he had earlier picked up Saiful Effendi. While he waited with the police in the car, about an hour later, Saiful Effendi coincidently passed by the area where his house was located. Saiful Effendi was arrested and brought to the Damansara Uptown Police

Station in another car. At the police station, he was asked to identify Saiful Effendi which he did. The accused testified that he was framed and had nothing to do with the drugs found.

Duty Of The Court At The Conclusion Of The Trial

[32] The duty of a trial court at the conclusion of the defence case is set out in s. 182A of the Criminal Procedure Code which reads as follows:

> 182 A - Procedure at the conclusion of the trial
>
> (1) At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.
>
> (2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.
>
> (3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal

[33] In *Md Zainudin Raujan v. PP* [2013] 4 CLJ 21; [2013] 3 MLJ 773, the Federal Court observed as follows:

> At the conclusion of the trial, s 182A of the Criminal Procedure Code imposes a duty on the trial court to consider all the evidence adduced before it and to decide whether the prosecution has proved its case beyond reasonable doubt.
>
> The defence of the accused must be considered in the totality of the evidence adduced by the prosecution, as well as in the light of the well-established principles enunciated in *Mat v. Public Prosecutor* [1963] 1 LNS 82; [1963] 1 MLJ 263 with regard to the approach to be taken in evaluating the evidence of the defence.

[34] Section 182A states that 'all' the evidence must be considered by the court. It is to be noted that emphasis has been laid on the phrase 'all'. In *Prasit Punyang v. Public Prosecutor* [2014] 7 CLJ 392; [2014] 4 MLJ 282 it was held as follows:

> In accordance with the provisions of s 182A(1) of the Criminal Procedure Code, it is the bounden duty of the learned JC, at the conclusion of the trial, to consider all the evidence adduced before him and shall decide whether the prosecution has proved its case beyond reasonable doubt. The legislature has advisedly used the term all the evidence. The emphasis must be on the word all.

[35] As to what amounts to a 'reasonable doubt', the phrase itself is not defined in s. 182A of the Criminal Procedure Code. However, there is a plethora of case law as to what amounts to a reasonable doubt. In *Public Prosecutor v. Saimin & Ors* [1971] 1 LNS 115; [1971] 2 MLJ 16, it was held by Sharma J that:

> "It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge." In the case of *Liew Kah Ling & Ors v. Public Prosecutor* [1960] MLJ 306 Thompson CJ referred to the quantum of proof required to prove a case "beyond reasonable doubt" when he quoted the judgment of Denning J (as he then was) in the case of *Miller v. Minister of Pensions* as follows: "The degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence' of course it is possible, but not in the least probable' the case is proved beyond reasonable doubt but nothing short of that will suffice.

[36] Denning J went on to observe further in *Miller*'s case:

> That evidence that is in the least probable must be evidence that is credible, plausible or logical such that a reasonable person, having regard to the ordinary course of nature or natural events, human conduct, and in the particular circumstances of the particular case, would accept it as to act upon it as having occurred, or as truthful or accurate; and not a doubt that could, with the application of some ingenuity, be conjured up, envisioned or visualised in a story.

[37] In the case of *Public Prosecutor v. Datuk Haji Harun Haji Idris & Ors* [1977] 1 LNS 92; [1977] 1 MLJ 180 Abdoolcader J (as he then was) explained the phrase reasonable doubt as follows:

> It is not necessary for the defence to prove anything and all that is necessary for the accused to do is to give an explanation that is reasonable and throws a reasonable doubt on the case made out for the prosecution. It cannot be a fanciful or whimsical or imaginary doubt, and in considering the question as to whether a reasonable doubt has been raised, the evidence adduced by and the case for the defence must be viewed in at least some amount of light, not necessarily bright sunlight, but certainly not against the dark shadows of the night.

[38] It can be summarised therefore that the phrase 'reasonable doubt' excludes fanciful or imaginary doubts or stories that are so obviously conjured up so as not to be in accord with the ordinary course of nature or human conduct when viewed and appraised from the test of reasonableness. The foregoing of course, are only guidelines and the court must apply these according to all the circumstances of the case at hand. Aside from the above, the correct thought process and stages that should be followed by a trial court in the assessment and evaluation of the defence evidence is that as

encapsulated in the time honoured decision of *Mat v. Public Prosecutor* [1963] 1 LNS 82; [1963] 29 MLJ 263 where it was held by Suffian J (as he then was) as follows:

> The position may be conveniently stated as follows:
>
> (a) If you are satisfied beyond reasonable doubt as to the accused's guilt Convict.
>
> (b) If you accept or believe the accused's explanation Acquit.
>
> (c) If you do not accept or believe the accused's explanation Do not convict but consider the next steps below.
>
> (d) If you do not accept or believe the accused's explanation and that explanation does not raise in your mind a reasonable doubt as to his guilt Convict.
>
> (e) If you do not accept or believe the accused's explanation but nevertheless it raises in your mind a reasonable doubt as to his guilt Acquit.

[39] The approach in *Mat v. Public Prosecutor* was judicially endorsed by the Federal Court as being the correct one to adopt when evaluating the evidence of the defence case in *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457; [2005] 6 MLJ 393 when it held:

> For the guidance of the courts below, we summarise as follows the steps that should be taken by a trial court at the close of the prosecution's case: (i) the close of the prosecution's case, subject the evidence led by the prosecution in its totality to a maximum evaluation. Carefully scrutinise the credibility of each of the prosecution's witnesses. Take into account all reasonable inferences that may be drawn from that evidence. If the evidence admits of two or more inferences, then draw the inference that is most favourable to the accused;
>
> (ii) ask yourself the question: If I now call upon the accused to make his defence and he elects to remain silent am I prepared to convict him on the evidence now before me? If the answer to that question is 'Yes' then a *prima facie* case has been made out and the defence should be called. If the answer is 'No' then, a *prima facie* case has not been made out and the accused should be acquitted;
>
> (iii) **after the defence is called, the accused elects to remain silent, then convict**;
>
> (iv) **after defence is called, the accused elects to give evidence, then go through the steps set out in *Mat v. Public Prosecutor* [1963] MLJ 263**. (emphasis added)

[40] Following from the above, if the court does not accept or believe the defence raised by the accused it must not convict but must proceed a stage further by considering whether the defence evidence has raised in the mind of the court a reasonable doubt as to the guilt of the accused. If it does, then the accused is nevertheless entitled to an acquittal. However, in this case this

court has also to consider the rebuttable statutory presumption under s. 37(da)(vi) which has arisen against the accused. The burden of rebutting a statutory presumption that has arisen against an accused is on the balance of probabilities. This was decided in the Privy Council case of *Public Prosecutor v. Yuvaraj* [1968] 1 LNS 116; [1968] 1 MLJ 238 where the Board speaking through Lord Diplock said as follows:

> Generally speaking, no onus lies upon a defendant in criminal proceedings to prove or disprove any fact: it is sufficient for his acquittal if any of the facts which if they existed would constitute the offence with which he is charged are "not proved". But exceptionally, as in the present case, an enactment creating an offence expressly provides that if other facts are proved, a particular fact, the existence of which is a necessary factual ingredient of the offence, shall be presumed or deemed to exist "unless the contrary is proved". In such a case the consequence of finding that that particular fact is "disproved" will be an acquittal, whereas the absence of such a finding will have the consequence of a conviction. Where this is the consequence of a fact's being "disproved" there can be no grounds in public policy for requiring that exceptional degree of certainty as excludes all reasonable doubt that that fact does not exist. In their Lordships' opinion the general rule applies in such a case and it is sufficient if the court considers that upon the evidence before it is more likely than not that the fact does not exist. The test is the same as that applied in civil proceedings: the balance of probabilities. This was the test which was approved by the Court of Criminal Appeal in *R v. Carr-Briant* [1943] KB 607 a case upon a provision in an English statute in similar terms to that contained in section 14 of the Malaysian Prevention of Corruption Act 1961.

[41] The evaluation of the defence evidence was undertaken in the light of the well-established principles just alluded to.

Evaluation Of The Defence Case

[42] The essence of the accused's defence is that the drugs belong to Saiful Effendi and that he is the victim of a frame up. The accused however, does not deny that at the time of his arrest he was at Lorong 8, Kampung Merbau Sempak Sg Pelong, Petaling Jaya (the place of incident). He however said that he was not alone in the taxi but that he was ferrying the said Saiful Effendi that day to a house of the latter's friend by the name of Otai. When the accused stopped his taxi at the place of the incident, Saiful Effendi alighted from the taxi leaving a plastic bag behind at the foot rest at the back passenger seat. Saiful Effendi was then chased by a group of men in plain clothes and managed to get away while the accused who was at the time in the taxi was then arrested. This is at variance with the evidence of PW3 who testified that from the time the raid was conducted until the arrest of the accused, only the accused was present in the taxi and that it was the accused

who alighted from the taxi and attempted to flee until he was apprehended. PW3 was categorical in his evidence that there was no other person in the taxi and at the place of the incident other than the accused. Although PW3 was challenged on this, he remained steadfast that it was only the accused and no one else who was there. It was not suggested that PW3 and the accused were known to each other before the incident and no suggestion was also advanced that PW3 had any axe to grind with the accused. On the contrary, PW3 candidly admitted that while Saiful Effendi was arrested that night, Saiful Effendi was not however present when the accused was arrested. PW3 had also testified that Saiful Effendi had no connection with this case.

[43] The accused admitted in cross examination that he had three years' experience in being a taxi driver and that he had driven the taxi with registration No. HWD 6002 for about a year and a half before his arrest. The accused further admitted in cross examination that the leg room at the front passenger seat in the taxi is wider than the leg room of that of the driver as shown in the photograph P14(3). The accused also admitted in cross examination that if a passenger were to sit at the back, he would normally place whatever he was carrying either at the back seat or in the boot. He said that there would be no reason for him to place things in the front seat. Because of this, the accused also said that should a passenger sit in the front seat and he had a package with him, he would normally place the package in the foot rest in the front passenger seat which was much wider and there would not be any reason for him to place the package in the foot rest at the back seat. These admissions by the accused during the course of cross examination is not consistent with his evidence in chief which was that the person by the name of Saiful Effendi placed the plastic bag he was carrying at the foot rest at the back passenger seat while he himself sat in the front passenger seat of the taxi.

[44] The evidence of the accused that Saiful Effendi placed the plastic bag at the foot rest of the back seat also runs counter to the evidence of PW3 which was that the only drugs found in the taxi was the packages under the driver's seat and not at the foot rest of the back passenger seat.

[45] The accused further admitted in cross examination that should a passenger enter his taxi carrying something that emitted a strong smell such as dried or salted fish, he would be able to smell the odour in the taxi. PW3 testified that when he opened the door of the taxi, he smelt the odour of the said drugs. It is also significant that the evidence of PW3 in this respect was unchallenged. The combined effect of the above evidence is that it was not probable that the emission of the odour of the drugs had escaped the olfactory senses of the accused if indeed it was true that Saiful Effendi had brought the drugs into the taxi. The explanation of the accused when confronted with this was to say that he was unfamiliar with the smell of cannabis. Even if this was

so, it would at least have prompted a reasonable person that had occasion to smell the odour of something strange, to investigate or to at least make inquiries of the owner of such a strange smelling package, neither of which had occurred in this case.

[46] The accused also testified that his reaction when he witnessed Saiful Effendi being chased by unknown persons in plain clothes was that he was shocked and afraid. It would be the reasonable reaction of someone similarly circumstanced to have immediately locked the doors to his vehicle if not to have started the car and proceed to drive of in haste. The accused however, chose to remain passive while the door to the taxi was opened after the men had tapped on the window. It is the submission of the prosecution that this version of events by the accused is untrue because in fact the accused was arrested outside the taxi that day. The overall consideration of the facts of the case together with the probabilities of the circumstances that prevailed at the time would be more in accord with the prosecution evidence that the accused was arrested while carrying the plastic bag containing the drugs and in attempting to flee.

[47] It was also submitted by the prosecution that it is not in accord with the probabilities of the case that Saiful Effendi would be casually walking in the vicinity of his neighbourhood when according to the accused, he had made a successful getaway from the clutches of the police that very same day. It would indeed be improbable for someone who just hours ago had given the police the 'slip' to be brazenly parading in public and more so near his neighbourhood. The version of the accused on this point therefore is not probable when measured against the overall circumstances prevailing and as against the evidence led by the prosecution.

[48] PW3 did admit in evidence that the accused had pointed out the house of Saiful Effendi and that the latter was also arrested on the same day but he could not remember at what time this was. PW3 also testified that there was an arrest made at Bandar Baru Sentul but he could not recollect the name of the person arrested. PW3 was however steadfast in his testimony that at the time and the place where the accused was arrested, there was nobody other than the accused present. His evidence was corroborated by SP5, the investigation officer of the case, who testified that from his investigation, at the time of the raid, no one apart from the accused was present at the place of incident. SP5 further testified that he did not investigate who the owner of the house was near where the incident occurred because the accused was arrested by the side of the road and not in the house. SP5 testified that from his investigation, there were no members of the public who had witnessed the arrest of the accused as there was no one present at the time. From a consideration of all the circumstances of the case, and a consideration of both the evidence of the witnesses for the prosecution and that of the accused, it is more in accord with the reasonable probabilities of the case that there was no one else besides the accused at the place of the incident at the time of arrest.

Drugs Recovered From The Accused Weighing 879g

[49] From a consideration of all the evidence in this case and the factual matrix of the case, this court finds that the act of the accused in carrying the drugs contained in the white plastic bag when apprehended by the police, raises the irresistible inference that the accused intended to traffic the drugs in question. If not for the fact that he was apprehended, the fair inference was that the purpose of the accused in so carrying the impugned drugs would have been to hand them over to someone else for a price. The nett weight of the drugs being 879 grams would further raise the inference that it was for the purpose of trafficking and not for the personal consumption of the accused.

Drugs Recovered From The Taxi Weighing 3,801g

[50] The prosecution has led evidence, both oral and documentary, during its case that the taxi the accused was driving was leased to him for a period of about one and a half years before the arrest of the accused. These facts are not in dispute. It was also led in evidence by the prosecution that the keys to the taxi was recovered from the right trouser pocket of the accused. There was no evidence led by the defence that anyone else had rented or borrowed the taxi prior to the arrest of the accused on 8 May 2012. The manner in which the drugs in question was found concealed under the driver's seat raises the inference that it was done so in order to conceal detection while it was being transported and therefore raises the further inference that it was done so for the purpose of trafficking in the impugned drugs. This, coupled with the fact that the nett weight of the drugs found in the taxi was 3,801g which far exceeded the statutory minimum, also raised the irresistible inference that it was for the purpose of trafficking. The weight of the said drugs would also militate against any argument that the drugs were for the personal consumption of the accused.

Decision Of The Court

[51] From a consideration of the foregoing, it is the finding of this court that the accused has therefore failed to rebut on a balance of probabilities the presumption of trafficking under s. 37(da)(vi) of the Dangerous Drugs Act 1952 both in respect of the drugs having a nett weight of 879g recovered from him and also the drugs having a nett weight of 3,801g recovered from the taxi as per both charges against the accused. The accused had also failed to raise a reasonable doubt as to his knowledge and possession of the drugs in both the charges against him. The court therefore finds the accused guilty of both charges under s. 39B(1)(a) of the Dangerous Drugs Act 1952 and punishable under s. 39B(2) of the same Act and convicts him on both charges accordingly. The accused is to suffer death by hanging as mandatorily provided for.